Collection Management Handbook

The Art of Getting Paid

THIRD EDITION

A. Michael Coleman

John Wiley & Sons, Inc.

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Dedication

This volume is dedicated to the thousands of professionals charged with the formidable task of converting credit sales into bank deposits. Whether they are titled as bookkeepers, customer service reps, salespeople, entrepreneurs, credit managers, collection agencies, attorneys, or bill collectors—they all play a pivotal and important role in our economy. Without the combined, dedicated efforts of the people assigned to this function, charge-offs would metastasize to catastrophic dimensions, sufficient to drive our economic infrastructure to certain calamity. Fortunately, however, in our untiring quest to fulfill the credit sale—getting paid—equilibrium is maintained, enabling stimulated circulation of currency, while in turn invigorating our economy.

This volume is dedicated to these indefatigable souls, who for whatever hats they may wear ensure that customers dutifully honor credit terms, and in so doing, contribute to our economic well-being.

About the Author

Reducing the complex to the simple is one of the most difficult aspects of writing biographies of people who are at or near the pinnacle of their chosen field. When the subject is Michael Coleman, the challenge is even greater. A grade-school dropout (his last year in the classroom was the seventh grade), Mr. Coleman traded a basic education for "riding the rails" in the pre-Amtrak era armed with an illegitimate pass. He accumulated thousands of rail miles as a teenager, and by age 21, he acquired seven vintage rail cars—all on credit. A tumultuous sales career during his twenties resulted in him settling for a menial job in a tomato packing plant.

Along the way, Mr. Coleman built the foundation for his incredible rise to success, attaining paralegal status representing himself in hundreds of consumer lawsuits, achieving an enviable record of accomplishments—all without an attorney. These lawsuits ranged from minor fender bender mishaps to complicated jury trials. Mr. Coleman consistently secures monies in difficult cases on which attorneys have given up, including the recovery of voluminous judgments.

By age 35, he became an accomplished bill collector authoring a best-selling book, *The Art of Getting Paid*, published by Prentice Hall and later updated and published by John Wiley. He took to the lecture circuit, delivering more than 200 free talks before being paid a $500 fee. Five years later, Mr. Coleman earned accolades as a professional speaker. Simultaneously, he parlayed a $35,000 investment (mostly borrowed money) into a multimillion-dollar real estate portfolio. Today Mr. Coleman has delivered hundreds of speeches for America's most respected corporations and has authored countless articles and three books: *A Passion for Trains, Consumer's Day of Retribution,* and *The Art of Getting Paid*.

He is a collector of antique automobiles and a die-hard ferro-equinologist ("ferro" = iron, "equin" = horse, "ologist" = study)—the study of iron horses—a railroad buff. Mr. Coleman is also an avid international train traveler and serves as general partner to numerous real estate trusts.

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Preface

Credit sales are interwoven in the fabric of corporate culture—a necessary evil that, if combined with an aggressive recovery effort, yields maximum dollars. If we are to achieve optimum conversion of receivables into cash, debt collection skills must be honed.

Proportionate to risk taking, corporations hope to realize profits sufficient to offset bad debt write-offs. To the degree that they extend credit, simultaneous with the customer's having the wherewithal to pay, other factors also determine success. The process can either produce a dollar bonanza or end in a bottom line written in red ink. Management of receivables is related to selling but differs in that debt recovery is making a sale after the sale (i.e., getting paid).

Companies place great emphasis on marketing but practice only a haphazard effort in converting credit sales into bank deposits. In most cases, accounts receivable represents a company's most important asset, yet its management is often a neglected function. Why? The business landscape reverberates with sales and marketing know-how, but conversely, money procurement is shunned. Stated another way, debt recovery is closing up-front, a reverse selling process that gives would-be collectors the heebie-jeebies. Unfortunately for most creditors, conventional collection procedures do not yield results proportionate to those geared toward generating new customers.

The information age also has its drawbacks. Too many creditors focus on the information explosion, becoming fascinated by the parade of new gizmos, which offers more intrigue than the humdrum of calling recalcitrant debtors. Add to this the stomach-wrenching task of engaging in verbal warfare and it's obvious why debt collection takes a backseat to the positive aspects of selling. Like it or not, gladiatorial combat is a game with which creditors must reckon. It takes iron nerve and bulldog determination to extract money from nonpaying customers, a posture for which a collector must maintain momentum and self-motivation. It is not enough to educate collectors in customer service techniques because success depends on maneuvering many personality types into negotiable climates. Various laws, debtor attitudes, the cost of money, liberal credit policies, and increased competition have fostered a dog-eat-dog mentality.

Today's debtor attitudes do not respond to yesterday's dunning. Similarly, bombarding debtors with letters and phone calls, although sometimes effective, will not in itself yield

substantial results. Nonpaying customers must be maneuvered into a negotiating mentality by zeroing in on their hot buttons. Yet despite their lack of bottom-line impact, most credit executives continue practicing the virtues of good customer service, applying them universally within their portfolios, falsely believing that a smile and goodwill can save the day. It will not! True, conciliatory appeals are preferred, but they don't work with nefarious types. There has been virtually no redefinition of collection methodology—until now.

This expanded edition elevates debt recovery to its highest level, incorporating many avenues of strategic creditor recourse. For the first time, accounts receivable practitioners have at their fingertips a treasure trove of awesome firepower. Among the new weaponry are easy-to-implement techniques to utilize small claims courts nationwide, expanded investigatory resources, recovery of money judgments, and potent legal remedies—including how to initiate an impleader action, a clever device that turns the classic debtor's excuse "I can't pay you because I haven't been paid" (by legally extracting the money due from your customer's customer) into a creditor checkmate. Imagine the euphoria of legally ambushing your nonpaying customers (who make their financial problems yours) and euphorically proclaiming: "Make my day!" This revised edition also includes the ultimate creditor proficiency gauge: an accounts receivable exam/solutions that equips the reader with the legal knowledge and strategic ammunition to subdue—and collect from—even the most formidable scoundrels.

In the credit granting arena, this valuable resource includes several easy-to-implement techniques to *prevent* a bad debt, including venue, jurisdiction, exercising Long Arm Statutes, impleader, ACH electronic debit, and other devices that, if implemented, will veil creditors in an umbrella of protection. If an account does default, the safeguards illustrated within will maneuver a company's receivables into a secured position.

The art of receivables management is much more than applied psychology. The science goes beyond an ability to communicate. Successful debt recovery requires a mastery of numerous persuasion skills, including, but not limited to, negotiation, application of legal principles, customer service appeals, persuasion, street methodology, jailhouse lawyering, intimidation, guerrilla warfare, storytelling, barter, and even humor.

The collection agency industry is the ideal forum to gauge receivables management success because third-party agents' livelihood depends on converting credit sales into bank deposits. Professional collectors in the employ of agencies do not get paid unless they recover delinquent receivables. As a result, the collection agency industry has mastered the art par excellence. It is a marvelous learning forum. What better source to employ as mentors? Collection agencies typically operate on a "no collection, no fee" basis. Because they are paid only for what they produce, their income is proportionate to results; however, just because collection agencies are in the business of recovering bad debts, does not mean they are all experts. Of our nation's estimated 8,000 collection agencies, less than 5% practice the techniques in this extraordinary volume. Why? Just as in every profession, there are always the majority of mediocre types. The experts almost always excel. The techniques contained herein are practiced by the minority of supercollectors—individuals whose commission income is comparable to top Fortune 500 executives. Who would you rather

learn from: the amateur collector who takes potshots at balloons (limiting debtor pursuit to letters and phone calls) or the strategist who skillfully maneuvers the intentional debtor into a vexing and embarrassing predicament by performing "mission impossible" accomplishments, without a traumatizing lawsuit?

This book is the result of exhaustive research, complemented with thousands of actual real-life cases. It is a treasury of vast experiences extracted from superachievers who have reached the highest levels of receivables management success. The principles in this book were extracted from the collection agency industry's most prolific talent—virtuosos whose modi operandi are in touch with today's debtor mentalities. Professional bill collectors have one objective: getting paid via the shortest, most direct route. This book reveals the path of least resistance relevant to virtually every conceivable problem. I absolutely guarantee that you will not find a more comprehensive how-to inventory of proven strategies than within these covers.

In the following pages, you will encounter an enormous inventory of cash-producing formulas derived from industry leaders who are at the head of their class in the complex world of debt recovery. These techniques will do much more than help you collect accounts; they will also multiply your bad debt recoveries and act as a springboard to new levels of achievement. Although the knowledge presented here is easy to digest, you will have to go through the process of not only learning new skills but also committing them to rote memorization. Only when these strategies become ingrained in your thinking, subject to instinctive recall, and eventually become habit will you, too, advance to the head of your class.

Put on your thinking cap and fasten your seat belt, for you are about to enter the fast track to accounts receivable success. Armed with a knowledge of what follows combined with practice and determination, your accounts receivable will transition from complacent to gold medal status—a quantum leap that guarantees maximum receivable penetration while yielding superior recovery. I challenge you to never again accept victimhood and write-offs as you squeeze every last dollar from your hard-earned credit sales.

A. MICHAEL COLEMAN

Harrisburg, PA

Acknowledgments

The author expresses sincere appreciation and gratitude to the following individuals who have been instrumental in the production of this book. Without their contribution, this learning experience would not have been possible.

Russell Case, Esq., former editor of the *Credit and Collection Management Bulletin,* Bureau of Business Practice

It was Russell Case, the BBP's prolific editor, who first recognized a need to introduce a success course on receivables management. Russ correctly surmised that too many books heretofore published on collection management were credit oriented and/or focused on conventional receivable procedures. Russ desired to reveal the recovery techniques of accomplished collection professionals via a comprehensive how-to manual. His insight produced the first edition in 1988, which is now recognized as the Bible in the debt collection industry.

The New York State Bar Association, Albany, New York

As a self-taught, pro se litigant, I relentlessly studied the techniques of virtuoso lawyers, particularly their verbal confrontation/persuasion skills, which I modified for debt collection purposes. These scorch-'em-speechless practitioners propound their spellbinding oratories on adversaries, which often yielded blockbusting acquittals/verdicts. If picturesque words shrewdly presented in opening statements and/or summations could win verdicts in the courtroom for accused felons, then why couldn't silver-tongued collectors motivate contumacious debtor types into satisfying their debts? The practical application of this technique is more than an oratorical dissertation—it's the powerful command of phraseology—picturesque words, metaphors, and quotes, which are at the cornerstone of persuasive debtor communications.

J. Douglas Edwards

Few professionals have influenced the art of making sales as has the great sales trainer, J. Douglas Edwards. As a salesman turned collector, I was inspired by Mr. Edwards' com-

monsense approach for maneuvering suspects into prospects and then into commissionable sales. J. Douglas Edwards taught salespeople how to increase their incomes via mastery of the assumptive tie down, shut up, closing question, alternate of choice, lost sale, storytelling, and phraseology techniques. Although the author takes no credit for introducing Mr. Edwards' world-renowned techniques, I was, however, one of the first bill collectors to recognize them—and apply them to receivables management. Virtually every book, seminar, and training manual on the subject of debt collection has failed to penetrate receivable recovery as a post-sale, closing process. In fact, the recovery of credit sales is a sale after the fact. The only difference between a professional salesperson and a collector is that the collector closes up front.

Corporate America

For more than 25 years, the corporate landscape has entrusted the author with an infusion of receivables that covered the gamut. Thousands of debtor types were relentlessly pursued, from condescending pathological liars (who tell creditors what they want to hear) to mastermind white-collar credit criminals who bilked millions of dollars via felonious manipulation. This author has successfully locked horns with them all. Many of these recoveries were "mission impossible" in demeanor. Whether the receivable was just a slow pay, conducive to customer service appeals, or ruthless, predatory credit criminals, thousands of receivables, representing millions of dollars in recoveries, has taught the author that the science of getting paid involves much more than the conventional approach of letter writing, phone calls, and legal intervention. The truly successful collector must be much more than an everyday fixture, dialing numbers and dunning deadbeats. A professional must be proficient in several callings: customer service, problem solver, troubleshooter, strategist, negotiator, communicator, investigator, asset locator, jailhouse lawyer, and even humorist. These are just a handful of the prerequisites necessary to achieve the accolades of the profession. From corporate America to a Main Street, Small Town, America, I am grateful to the armies of creditors who entrusted their no-pays to this streetwise collector. The sheer volume of receivables has, over the years, enabled the author to hone and perfect the art. The techniques in this volume are not based on theories or conjecture, but rather a three-decade-plus exposure to a landscape saturated with the most challenging and perplexing receivable problems.

To Sheck Cho and Stacey Rympa, of John Wiley & Sons, who had the foresight to publish this updated edition, a special vote of thanks. Sheck and Stacey recognized a need to provide creditors with a blueprint sufficient to convert no-pay receivables into bank deposit realities. They also converted stacks of documents and the original manuscript into the finished product. Many cash-starved creditors will profit handsomely owing to John Wiley & Sons' investment in publishing this manual.

A heartfelt thank-you is also due to Tom Williams of Investigations Unlimited. Tom's knowledge of information retrieval, particularly skip tracing, asset locating, and debtor

profiles, has not only produced valuable information, which resulted in recoveries, but he also shared his knowledge with readers sufficient to impact their bottom line.

And last, but not least, to Lucy E. Trembone—the woman behind the author who painstakingly compiled mountains of gibberish into drafts and drafts into recognizable submissions. Lucy worked laboriously to write and rewrite the semifinal drafts. Without her commitment and support, I could never have fulfilled this arduous task, let alone meet intermittent deadlines.

CHAPTER 1

A New Collection Science Is Born

The title *collector* conjures up a very negative image. It connotes a cold, ruthless, insensitive individual whose only purpose is to extract monies from other human beings without emotion or feeling. A collector might be a credit manager, adjuster, accounts receivable clerk, bookkeeper—anyone who has been assigned the task of collecting delinquent accounts. Collectors are a valuable asset to any business, but, unfortunately, they are often viewed as a necessary evil.

Most collectors receive their training on the job—the prevailing theory being that experience is the best teacher. This cliché has some validity, but when collectors boast that they have 10, 15, or 25 years' experience, you can take that to mean their experience was accumulated in the first one or two years. After the break-in period, people tend to develop certain habits, which turn into prejudices. Experience is the best teacher, as long as you maintain an open mind and continue to grow. Develop a thirst for knowledge and continue to learn, always striving to reach ever-higher pinnacles of success.

We accept knowledge as an additive process. We believe that by acquiring new knowledge we increase our possibilities for success. What we fail to realize is that training for success is also a *subtractive* process. It may be necessary to eradicate poor habits that are barriers to higher levels of achievement.

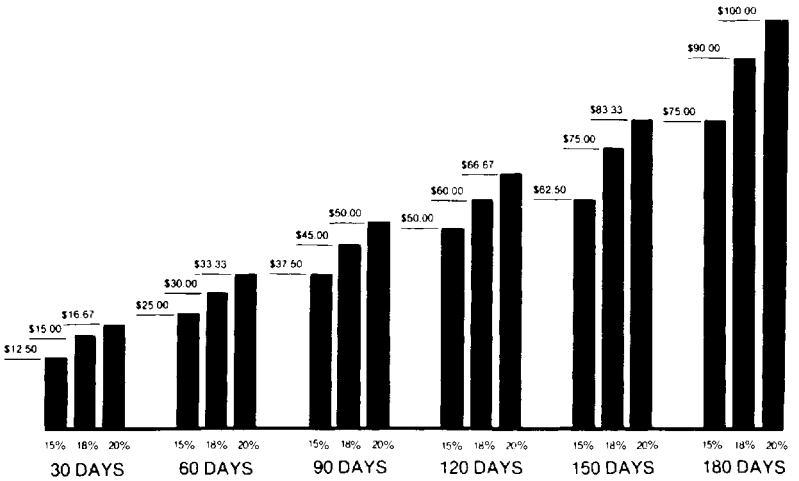
If you want to grow a beautiful rose garden, you first plant the roses. Then you nourish and fertilize the plants. But this is not enough to produce beautiful roses. You also have to eliminate weeds and insect pests. So it is with the human mind. Our minds are cluttered, and that hinders our success mechanism. Let us approach the vital subject of collection management the same way we approach the rose garden—by tearing down old myths and shattering conventional theories that cripple our progress. The best way to point up the value of this philosophy is to prove to you that conventional collection techniques produce minimal results. (See Exhibit 1.1.)

If a new collector were to read every book, listen to every CD, network with other credit professionals, research every known source of information on collection management, and then work long hours applying conventional theories, a modicum of success would inevitably be realized. The collector might even attain expert status and recognition from peers. But this student of accounts receivable management still could not attain the

EXHIBIT 1.1 DAYS SALES OUTSTANDING (DSO): A GRAPHIC SURVEY

WHAT IT COSTS **YOU** PER DAY,
PER THOUSAND DOLLARS FOR EACH DAY'S
SALES OUTSTANDING AT SPECIFIED INTEREST RATES.

$$\text{D.S.O.} = \frac{\text{ACCOUNTS RECEIVABLE BALANCE}}{\text{AVERAGE DAYS SALES}}$$



As every financial executive knows, reducing the DSO is one of the most important functions of receivable management. The longer a company holds onto an uncollectable receivable, the greater its costs and thus the higher its DSO. However, this does not necessarily mean that a company should place its receivables early in the cycle, for the risk via conventional methods may cause customer alienation. This chart illustrates just how much money it costs for each $1,000 at varying interest rates, in 30-day intervals to 180 days.

high level of collection success that is possible using the techniques in this book. Why? Because my approach is unconventional and creative.

Many of the techniques and the knowledge presented in this book are new to the business of converting past-due receivables into cash. For example, assume that a customer owes $X and isn't paying because his customer isn't paying him—in effect making his problem yours. The conventional approach would be to wait and see. Even if you placed the receivable for collection, the same problem would ensue. The solution may be the extraordinary remedy of impleader—a potent legal maneuver that bypasses a nonpaying customer and establishes legal criteria to sue the customer's customer. This remedy, however, must be transaction related (i.e., the nonpaying customer's customer must be a beneficiary of your

products or services), and there must be provable damages of your not getting paid if your customer eventually collects from his customer and then threatens not to pay you. Although not applicable in every situation, impleader is nevertheless a powerful solution.

Many frustrated collectors and credit managers have read books, attended seminars, and subscribed to the theories promulgated by their peers. But when they apply this knowledge to the real world, they find that the concepts they have learned do not work. Examine any book or seminar on collection technique, and you will find that they all offer the same information rearranged in slightly different forms. There is almost nothing new on this important subject.

Preventive Remedies for Credit Grantors

"An ounce of prevention is the best cure." Good advice, but tragically, most credit grantors fail in structuring their sales, leaving gaping holes for nonpaying customers to exploit them. Most companies emphasize marketing, competing vigorously while relying on flimsy credit applications and guarantees to support the sale. Once in default, the quality of sale origination documents will greatly impact recovery. How can a company ensure being paid *after* initiation of the credit sale? Take the time to perform a reference check augmented with executing documents to protect your interests.

For the credit grantor, structuring an airtight credit application and guarantees is the best preventive medicine. Numerous variations are possible, including ACH electronic debit authorization, creditor venue provision, impleader, interest and collection expense, recovery of chattel, and other variations. There are numerous safeguards, each intended to cure a specific contingency.

Remedies to consider incorporating into a credit application and/or sale origination document(s) include the following:

- *Creditor venue provision.* Provides legal wherewithal for creditors to sue from their locale, specific customer consent to venue, and "minimum contracts" requirement. Permits creditor to sue in their state.
- *Corporate debtor extension of liability to officers and/or third parties, assignment, or arbitrary sale of business.* Use where debtor sells business with intent to defraud creditors.
- *ACH electronic debit provision.* Never again be a victim of "the check is in the mail" syndrome. Preauthorization guarantee permits creditors to electronically debit primary or alternate accounts. Includes Social Security numbers and/or EIN. In the alternative, a search firm can develop this information in the event debtors changes the checking accounts.

Originating the Credit Sale and Payment Guarantee

Fortunately, most customers practice integrity. Nonpaying customers, however, represent a challenge—recovering monies *after* the gratification of merchandise and/or services have

been tendered. Converting nonperforming receivables into cash depends on the credit application/guarantee; the security instruments that customers executed are instrumental. Tragically, for most creditors, their sale origination paperwork is as worthless as the paper it's printed on.

It's estimated that about 8 out of 10 credit applications/guarantees contain defects—inherent flaws—that seriously prejudice recovery. Why? Credit departments often rely on legalese written by corporate attorneys or copy language used by competitors. Credit applications and guarantees are often either out of date or inferior. The result is an origination document that *does not* protect the creditor. When an account proceeds into default, the real acid test of the guarantee is the leverage it maintains over nonpaying customers, particularly its enforcement. The object is not only to secure a creditor's position, but also to do so at minimum expense.

Another fallacy is fear, a stigmatized belief that the stronger the guarantee and its ramifications, the less likely it is that a prospective customer will sign it. Fear of the sale going to the competition paralyzes many creditors from protecting their interests.

Solution: The time to structure a creditor's position is simultaneous to the origination of the sale, or the "honeymoon" stage. Contrary to common belief, getting customers to agree to provisional remedies is *not* detrimental, provided they are presented properly. In situations where a customer refuses to cooperate, it may be better to deny credit (a reactionary customer is a sign of noncollectability). Transitioning a problematic account to a competitor may be better than gambling on uncertainty.

Neither does the customer have to execute a confusing clutter of paperwork to ensure safety. Depending on the complexity of the sale, dollar amount, and risk factors, documentation should average one and a half to three pages. The solution is to combine definitive legal provisions with psychology. Better to invest a few minutes with a new customer negotiating credit terms than to extend credit by the seat of the pants.

It is not the volume of paperwork, nor the legal mumbo jumbo, but rather a concise and definitive blueprint—an ironclad document—that will save the day. One sentence or paragraph can make the difference between recovery and write-off. Take the time to review these provisional remedies. By simply incorporating the correct legal language into a credit application, risk will be dramatically reduced.

Menu of Credit Sale Provisions

Consider the following clauses that can be incorporated into a credit application/guarantee:

- *Creditor venue clause.* Many creditors mistakenly rely on this typical language: "In the event of default, customer agrees to submit to the venue of *creditor's jurisdiction*." Wording documents with this or similar language is fatal. Your customer can still move to dismiss your complaint.

Solution: A credit application must include a "minimum contracts" and "continuity and regularity" clause, making it impossible for a defaulting customer to circumnavigate jurisdiction. Establishing the right to sue within your locale is critical because it forces a nonpaying customer to hire an attorney in your area. Statistically, 50% of nonpaying customers pay *without* expensive collection procedures when confronted with the reality of defending an out-of-state lawsuit. (Another advantage of this approach for creditors is that they can centralize legal intervention.)

- *Personal guarantee clause with privacy notice.* Recent changes in privacy laws have rendered language contained in conventional personal guarantees obsolete. Credit grantors are advised to restructure this critical document. Most personal guarantees are open ended, and while establishing personal liability, creditors fail to include a Social Security number and electronic search provision. New privacy laws make it illegal to access confidential information, thereby frustrating personal guarantee enforcement. You should close the gap by bridging the personal liability guarantee with a clause that permits accessibility to attachable assets, including waiver of privacy laws. What good is a personal guarantee if your customer transfers assets and/or conceals same? Worse, violate your customers' right to privacy, and you could be sued.
- *ACH electronic debit with site draft.* This remedy eliminates "the check is in the mail" syndrome and prioritizes remittances. Electronic transmittal of funds is the wave of the future. This provisional remedy provides several options, including grace periods, discount incentives, and default remedies. One of the outstanding features of ACH debit and/or site draft is that if your customer goes bankrupt, a shrewd creditor can tap a bank account that was maintained for payroll and/or tax liabilities. A creditor armed with this provision only needs to perform an electronic search (i.e., Social Security number or EIN) on a bank account to debit funds. Because the ACH debit provision permits transfer of funds, it cannot be challenged by a nonpaying customer. If the creditor is armed with a personal guarantee, the wherewithal to electronically debit funds from *personal*—even joint or retirement accounts—is available. This provision is especially valuable if your customer goes out of business or transfers assets. Joint accounts can often be debited, much to the dismay of a nonpaying customer.

  As an added creditor recourse, you could add a site draft provision and/or credit card debit authorization. This provides a backup to the electronic debit feature. Site drafts are especially useful if a customer has a borrowing relationship with its bank. Typically, customers do not divulge nonreportable debts to their bank, thus jeopardizing revolving lines of credit.

  Modern creditors and landlords who convert to ACH swear by it; its usage has often yielded recovery where otherwise the account would have been written off, placed for collection, and/or litigated. See Exhibit 1.2 for a sample ACH authorization electronic debt form.

EXHIBIT 1.2 CREDITOR AUTHORIZATION TO DEBIT BANK ACCOUNT: SAMPLE

PRE-AUTHORIZED CHECKING (PAC) AGREEMENT

INSTRUCTIONS
1. Sign the authorization using the signature(s) on file at your financial institution.
2. Attach a voided sample check.

As a convenience I hereby request and authorize the referenced financial institution to pay and charge my account for checks/electronic debits drawn on my account by _____ to its own order. This authorization will remain in effect until revoked by me in writing via certified mail, return receipt.

I agree that your treatment of each check/electronic debit, and your rights in respect to it, shall be the same as if it were signed by me personally. I further agree that if any such check/electronic debit be dishonored constitutes a breach of agreement.

DEPOSITOR(S)

Name of Depositor(s) listed on the account (Please Print)

Signature of Depositor

Signature of Joint Depositor (if applicable)

Name of Bank

Address of Bank

City State Zip

Bank Phone

Checking Account Number you wish to debit

Bank Routing Number

- Attach a voided sample check -

TO: THE BANK NAMED ABOVE
So that you may comply with your depositor's request, this Company agrees:

1. To indemnify you and hold you harmless from any loss you may suffer as a consequence of your actions resulting from or in connection with the execution and issuance of any check/electronic debit, whether or not genuine, purporting to be executed and received by you in the regular course of business for the purpose of payment, including any costs or expenses reasonably incurred in connection therewith.
2. In the event that any such check/electronic debit shall be dishonored whether with or without cause, and whether intentionally or inadvertently, to indemnify you for any loss whatsoever.
3. To defend at our own cost and expense any action which might be brought by any depositors or any other persons because of your actions taken pursuant to the foregoing debits, or in any manner arising by reason of this authorization.

Creditor: _____ **Date:** _____

Address: _____

Phone: _____

UCC-1 Chattel Liens

Another misconception is UCC-1 chattel liens. Creditors properly execute and file them, but they fail to bridge these important documents with the credit application and/or guarantee. The effect is that if a customer arbitrarily sells your secured merchandise, you still have to sue. Contrary to common belief, the mere filing of a UCC *is not* a cure-all that protects your merchandise from conveyance. Unless the transferee undertakes a UCC search, a nonpaying customer will get away with illegally disposing of your merchandise! Although a UCC-1 is better than no chattel lien, creditors should provision their liens to extend voluntary surrender to transferees/purchasers, including ancillary liability.

Solution: Restructure your UCC-1s and credit application to include extended liability protection. Thus, if a customer illegally transitions your liened merchandise, you will gain substantial leverage over the purchaser/transferee. One carefully worded short paragraph will make the difference between write-off and recovery the next time a customer transitions your merchandise to third parties.

Impleader and Unjust Enrichment Provisions

"I can't pay, because my customer hasn't paid me." Sound familiar? For creditors, this is one of the most frustrating excuses to hear. Most creditors foolhardily keep calling their delinquent customers inquiring whether they have the resources to pay the debt. Even if your customer eventually gets paid from its customers, what guarantee do you have that it will pay you? Relying on your customer's customers' remittance is a dangerous game of Russian roulette.

Solution: Contrary to common belief, creditors can sometimes circumnavigate the nonpaying customer and derive payment *directly* from their customer. Because there is no "privity of contract" between you and your customers, customer liability is diluted; however, under certain conditions, two potent remedies are available, albeit only with specific legal criteria. Impleader recourse is one of the most misunderstood, yet effective, remedies. Tragically, naive creditors write off monies that could have been recovered. The following is an example of how an impleader action will short-circuit your nonpaying customer:

The Players

You are creditor "A." "B" is your nonpaying customer. "C" is your customer's customer who is beneficiary to your merchandise and/or services.

The Remedy

B goes out of business and defaults to A. C is indebted to B for merchandise or services that originated with A. Although A has no direct contract with C, the latter is nevertheless obligated to remit to B. Why? B, now defunct, still has a valid receivable relevant to C. However, once C pays B, your customer would likely pocket the money. A's conventional remedy is to

sue B, but if B is a defunct corporation, A will likely secure an uncollectible judgment. A, however, would be wise to short-circuit C's remittance to B via an impleader action.

A's solution is to sue C for "unjust enrichment"—a legally prosecutable tort. Assume arguendo, that C pays B and B does not pay A. If A sues C for "unjust enrichment," C could still be held liable to A, maintaining a double liability having to pay A, although C paid B.

For C to legally extricate itself from multiple liability (i.e., to A and B), C, on the initiative of A's impleader complaint, simply deposits the monies that C owes B with the court; C is then legally discharged from its debt to B. The monies are then held by the court as escrow agent. B is then compelled to "implead" its claim against A, which would fail, because A has a superior contractual right to the proceeds as originating creditor. The effect of this power play is that B never gets his hands on the money C owes him. A gets paid, while C has eliminated multiple liability.

In its simplest terms, impleader is a legal strategy that, under certain conditions, may be exercised to circumnavigate your customer and proceed legally against their customer. Many of our clients are capitalizing on recoveries that would otherwise be written off.

Impleader solution: Although in some cases it's not legally necessary to compel a client to execute an impleader provision, its incorporation into a credit application/guarantee is important. Why? Assume that your customer goes out of business and you exercise this drastic remedy; your customer can *still* sue you per the Doctrine of Tortuous Interference of Contract (i.e., interfering with a contract in force with his client). The solution is to incorporate language that authorizes an impleader remedy, waiving tortuous interference of contract repercussions. By simply adding this language to an impleader guarantee, creditors gain a third-party resource (i.e., their customers' customers becomes an extension of the original creditor's liability).

Additional Safeguards

Another device is a blanket credit card debit. This remedy permits credit card debits for up to the full amount of the debt. Interestingly, a creditor does not necessarily have to obtain a copy of the customer's credit cards—or even their numbers and expiration dates—*only* a blanket authorization (although obtaining this information at the time of sale origination would expedite recovery). Then, if default occurs, the shrewd creditor need only employ a search firm to find the issuing bank and card number. For only a few hundred dollars, a creditor can access *all* of the nonpaying customer's credit cards and legally debit one or more until the debt is satisfied. *Warning:* The Truth in Lending Law provides for severe criminal and civil penalties for unauthorized credit card debits. Your waiver should include airtight language, together with a Section 212e dispute waiver.

Accessing Interest on Principal

One of the most common misconceptions is the wherewithal for creditors to charge interest on principal. Typically, creditors rely on printed invoices—usually 1.5% per month on

the unpaid balance. In fact, a customer can legally refuse to pay interest even though it is emblazoned on the creditor's invoices. Why? Because the most fundamental aspect of contract law is violated: "a meeting of the minds." Unless your customer signs a statement agreeing to payment of interest, the creditor cannot legally collect it. The only exception is court-impounded interest, which is usually less than 11% and applicable only on obtainment of judgment. To legally compel your customer to pay interest on overdue invoices, it is recommended that an interest provision be incorporated *separately* in the credit application or guarantee and signed by your customer.

Reimbursement of Collection and/or Attorney's Fees

How many times have you prevailed at recovering collection and/or attorney's fees? According to statistics, more than 85% of creditors who attempt enforcement of this provision fail. Three reasons for this failure are as follows:

1. Litigation encourages settlement, usually for less than contract liability.
2. Collection agencies and attorneys are not motivated to recover their fees, preferring to deduct commissions off the top.
3. Creditors' guarantees usually contain unenforceable or defective language.

For example, suppose your guarantee is worded with a 33.33% attorney's fee reimbursement provision, but jurisdiction limits third-party fees to 20%. In this instance, it doesn't matter what your customer agreed to—you'd only recover 20%. Another fallacy is enforcement. If you or your collection agency ever tried to recover third-party recovery expenses, your customer will almost always refuse to pay it, although it was agreed to in writing.

Solution: Unfortunately, the solution is not as simple as preparing a universal document. The variables of state laws relevant to the recovery of collection expenses are diversified. The trick is to connect reimbursement provisions with venue. Generally, reimbursement provisions should not contain percentages (i.e., 25% or 33.33%) but rather language that is broad enough to satisfy most state laws, while specific enough to legally hold your customer liable for reimbursement.

How to Incorporate Protective Legalese into Your Sale Origination Documentation

This section is intended to provide creditors with an arsenal of accounts receivable recovery strategies; it is a valuable resource for converting no-pays into bank deposits; it is *not* intended to be a course in credit granting. Nevertheless, prevention is always better than treatment. While the other side of the spectrum from recovering bad debts is prudent credit management, it is important to maintain a balance between safeguarding the credit sale and not resorting to overkill. Compelling your customer to execute a battery of legal